

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
MICHAEL STOCHOSKY  
  
Serial No.: 10/781,029  
  
Confirmation No.: 2832  
  
Filed: February 17, 2004  
  
For: PEER-TO-PEER IDENTITY-BASED  
ACTIVITY SHARING

Group Art Unit: 2146  
  
Examiner: Gerald A. Smarth  
  
Atty. Dkt.: 2095.004196  
  
Client Ref.: P3073XUS1  
  
CUSTOMER NO.: 62293

**REPLY BRIEF**

MAIL STOP APPEAL BRIEF - PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits this Reply Brief in response to the Examiner's Answer mailed May 4, 2009. The two-month statutory response date is Monday, July 6, 2009, since July 4, 2009 falls on a Saturday. This Reply Brief is being filed on or before the due date, therefore, it is timely filed.

If an extension of time is required to enable this paper to be timely filed and there is no separate Petition for Extension of Time filed herewith, this paper is to be construed as also constituting a Petition for Extension of Time Under 37 CFR § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

No fee is believed to be due as a result of this filing. However, should any fee(s) under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason, the Commissioner is authorized to withdraw funds from Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/2095.004196.

## **REMARKS**

Embodiments of the present Application are generally directed to sharing identity-based information between peers. The Examiner relies heavily upon *Briggs* and *Liversidge* to reject the claims of the present Application. However, the combination of *Briggs* and *Liversidge* do not teach or make obvious all of the elements of claims of the present application. *Briggs* is directed to sharing past user experiences with “buddies” over a network. In contrast, *Liversidge* is directed to collaboration using a “virtual team environment” which shares files in a group. Firstly, those skilled in the art simply would not combine *Briggs* and *Liversidge* in the manner claimed in the present application. Further, the combination of *Briggs* and *Liversidge* would not anticipate or make obvious all of the elements of claims of the present application.

### **A. Objections to the Specification**

In the Examiner’s Answer, the Examiner withdrew all objections to the Specification. Appellant acknowledges and appreciates the Examiner’s withdrawal of objections to the Specification as not providing antecedent basis for the terms “instant messaging module” and “computer-readable medium.” Insofar as the Examiner no longer objects to the Specification, these issues are now moot and thus, Appellant will not address these issues herein.

### **B. Rejection of claims under 35 U.S.C. §101**

In the Examiner’s Answer, the Examiner states that claims 1-15 and 38 are rejected under 35 U.S.C. §101 for being directed to software (*per se*). Appellant respectfully traverses this rejection for at least the reasons recited in the Appeal Brief (dated Nov. 5, 2008) and the Amended Appeal Brief (dated Dec. 24, 2008) incorporated by reference herein. Additionally, Appellant respectfully traverses this rejection for at least the following reasons.

In the Examiner's Answer, the Examiner states that there is "no where [sic] in the specification examiner can see Instant messaging module being explained as having hardware components, thus it can be viewed as being software." See Examiner's Answer, p.10. Contrary to the Examiner's position, the Specification, however, states:

"In the following description, for purposes of explanation, numerous specific details are set forth in order to provide a thorough understanding of the invention. The field of networking is such that **many different variations of the illustrated and described features of the invention are possible**. Those skilled in the art will undoubtedly appreciate that the invention can be practiced without some specific details described below, and indeed will see that **many other variations and embodiments of the invention can be practiced while still satisfying the teachings of the invention**. Further, those of skill in the art of networking appreciate the large variety of different networking protocols, topologies, transports, and the like that can be used to establish networked communications between computers. Accordingly, the present invention should not be understood as being limited to the specific implementations described below." Specification, p.7, line 13 to p.8, line 1. (emphasis added)

As is common in the art, various aspects of networking and communications can be expressed in hardware, software, firmware, and/or a combination thereof. Therefore, those skilled in the art having benefit of the present disclosure, would understand that concepts of the present invention can most certainly be implemented using hardware, software, firmware, and/or a combination thereof. Accordingly, claims 1-15 and 38 are allowable and in accordance with 35 U.S.C. §101.

### **C. 1. Rejection of claims 1-38 as obvious under 35 U.S.C. §103(a)**

In the Final Office Action, the Examiner rejected claims 1-38 as being obvious under 35 U.S.C. §103(a) over *Briggs* in view of *Liversidge*. Appellant respectfully traverses this rejection for at least the reasons recited in the Appeal Brief (dated Nov. 5, 2008) and the Amended Appeal Brief (dated Dec. 24, 2008) incorporated by reference herein. Claim 1, directed to an apparatus for sharing identity-based activity with at least one peer, calls for (1) a content daemon to detect and store identity-based activity, and (2) an instant messaging module, communicatively coupled

to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module.

Appellant respectfully asserts that **Briggs**, **Liversidge**, and/or their combination do not teach or disclose all of the elements of claim 1 of the present invention. In the Examiner's Answer, the Examiner asserted that claim 1 reads on various passages cited in **Briggs**. See Examiner's Answer, p.13-14. For example, the Examiner cites col. 2, ll. 28-41, as teaching that buddies on buddy lists may be specified as able to share aspects of their computer usage, and the Examiner cites col. 1, ll. 41-42 as reciting: "*Fig. 2 is a user interface for logging in or creating a new account.*" (emphasis in Examiner's Answer). Even if true, these passages, when combined, do not equate to sending an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module, as called for in claim 1. The Examiner has mistakenly combined the cited passages with an unsupported assumption of the Examiner's own making; namely, that if there is an interface for logging in and a buddy list that can be used for specifying sharing contacts, then **Briggs** teaches the identity-based activity related to a user logged-in to the instant messaging module. **Briggs** makes no such teaching or suggestion. The Examiner's assertion is purely speculative, inferring that such a teaching is made by assuming that the ability to log in implies that a user is logged in when sharing takes place. **Briggs**, however, does not teach such a feature or requirement. That is, there is no evidence or disclosure in **Briggs** that would support the contention that **Briggs** discloses or suggests identity-based activity related to a logged-in user. **Briggs** can just as easily be assumed to teach that a buddy can log in to the buddy's interface and collect information on aspects of another user's computer usage without that user being logged in. The Examiner seems to be applying excessive hind-sight reasoning to tailor the argument that **Briggs** discloses or

suggests identity-based activity related to a logged-in user. For at least these additional reasons, the Examiner erred in rejecting claims 1-38 under 35 U.S.C. §103(a). Appellant respectfully asserts that claims 1-38 are allowable and are not obvious over *Briggs* in view of *Liversidge*.

### C. 2. Rejection of claim 4 as obvious under 35 U.S.C. §103(a)

In the Final Office Action, the Examiner rejected claim 4 as being obvious under 35 U.S.C. §103(a) over *Briggs* in view of *Liversidge*. Appellant respectfully traverses this rejection for at least the reasons recited in the Appeal Brief (dated Nov. 5, 2008) and the Amended Appeal Brief (dated Dec. 24, 2008) incorporated by reference herein. Claim 4, which depends from claim 1, calls for sharing identity-based activity comprising instances of active content by a user logged-in to the instant messaging module. Active content includes files that a user is **currently accessing**, such as music files the user is currently listening to, movies the user is currently watching, or the like. See Application, p. 2, ll. 14-16. Sharing active content allows the user to communicate current activity in real-time.

Appellant respectfully asserts that *Briggs*, *Liversidge*, and/or their combination do not teach or disclose all of the elements of claim 1 of the present invention. In the Examiner's answer, the Examiner asserts that a visited URL database ("VUD") anticipates sharing identity-based activity comprising instances of active content by a user logged-in to the instant messaging module, as called for in claim 4. As Appellant has previously stated, active content includes files that a user is **currently accessing**. The Examiner argues that the VUD teaches this claimed feature because:

"[a] VUD stores URL's visited by users, or by participants. More generally, a user could visit a web site, listen to or watch content, rate a site or content, assign an emoticon or quick comment to a site or content, send or bookmark a site or content or download data; a *VUD* entry could result." Examiner's Answer, p.16 (citing *Briggs*, col. 2, ll. 50-55).

The Examiner has mistakenly applied the cited passage in *Briggs* at least because the cited passage does not teach or suggest sharing content that a user is currently accessing, as active content is described in claim 4. The cited passage in *Briggs* describes that user may go and view a site or watch content there, then rate the site/content or assign an emoticon, and then a VUD entry could afterward result. In contrast, claim 4 calls for sharing identity-based activity comprising instances of active content by a user logged-in to the instant messaging module.

For at least these additional reasons, the Examiner erred in rejecting claim 4 under 35 U.S.C. §103(a). Appellant respectfully asserts that claim 4 is allowable and is not obvious over *Briggs* in view of *Liversidge*.

### **C. 3. Rejection of claims 8-9, 11, 23, 29 and 35 as obvious under 35 U.S.C. §103(a)**

In the Final Office Action, the Examiner rejected claims 8-9, 11, 23, 29 and 35 as being obvious under 35 U.S.C. §103(a) over *Briggs* in view of *Liversidge*. Appellant respectfully traverses this rejection for at least the reasons recited in the Appeal Brief (dated Nov. 5, 2008) and the Amended Appeal Brief (dated Dec. 24, 2008) incorporated by reference herein. In addition, Appellant incorporates the arguments from § C.4. herein (*supra*) with respect to claims 8-9, 11, 23, 29 and 35. Claim 8, which depends from claim 1, calls for the content daemon to detect and store identity-based activity after logging-in the user to the instant messaging module, and wherein the instant messaging module sends an update to the identity-based activity. As described in the instant Application, by using an instant messaging module for sharing, users can share real-time content and files with other users, not just “static files” stored on the computer. *See, e.g.*, Specification, p.8, line 10 (formerly numbered as ¶¶ [0006] & [0027]).

The Examiner argues that the “Examiner does not see anywhere in these two paragraph where it states instant messaging module being used for sharing, users can share real-time

content and files with other users.” Examiner’s Answer, p.18. Appellants respectfully disagree with the Examiner’s assessment. The Board’s attention is respectfully directed to the Specification, p.8, line 10 (formerly numbered as ¶¶[0006] & [0027]) which states “As discussed, active content refers to a data file in current use at a peer...” (*emphasis added*). *Id.* As previously explained in this Reply Brief, **Briggs** does not teach sharing content currently in use. As such, **Briggs** does not, and cannot, teach this claimed feature as argued by the Examiner, and **Liversidge** fails to remedy this fundamental deficiency in **Briggs**.

For at least these additional reasons, the Examiner erred in rejecting claim 8 (and for similar reasons, claims 9, 11, 23, 29 and 35) under 35 U.S.C. §103(a). Appellant respectfully asserts that claims 8-9, 11, 23, 29 and 35 are allowable and are not obvious over **Briggs** in view of **Liversidge**.

### CONCLUSION

In view of the foregoing, it is respectfully submitted that the Examiner erred in not allowing all claims pending in the present application, claims 1-16 and 26, over the prior art of record. The undersigned attorney may be contacted at (713) 934-4069 with respect to any questions, comments, or suggestions relating to this appeal.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.  
CUSTOMER NO. 23720

Date: July 6, 2009

By: /Jaison C. John/  
Jaison C. John, Reg. No. 50,737  
10333 Richmond, Suite 1100  
Houston, Texas 77042  
(713) 934-7000  
(713) 934-7011 (facsimile)  
ATTORNEY FOR APPELLANT(S)